THE

CASE

OF

MARIA PERRY, *WIDOW*,

AGAINST

EDWARD PHELIPS, Esq. AND OTHERS,

CLAIMANTS

UNDER

THE LATE THOMAS LOCKYER, Esq.

LONDON:

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1789.


BRITISH MUSEUM

THE

CASE, &c.

JOHN LOCKYER, formerly of *Ilcheſter*, having a large real and perſonal eſtate, which he chiefly acquired by his profeſſion as an Attorney, by his will, dated the 13th of *June*, 1734, gave his lands and hereditaments, ſubject to an annuity of 20l. and his perſonal eſtate, to his brother, *Thomas Lockyer*, in truſt for his younger ſon, *John*, or any other younger ſon who ſhould firſt attain twenty-one years of age, and, in caſe he ſhould have no younger ſon who ſhould attain ſuch age, then, in truſt, for

his only ſon who ſhould attain that age; at which time he gave the ſame to ſuch ſon, his heirs and aſſigns, directing that, in the mean time, his eſtate ſhould be preſerved and improved, by his ſaid brother, for the benefit of ſuch ſon; and alſo directing that, upon his ſaid brother and his eldeſt ſon, *Joſeph*, conveying certain lands, called *Cheſter-meads*, to the ſame uſes, there ſhould be paid, out of his perſonal eſtate, 3,000l. in lieu thereof.

In *October* following the ſaid teſtator died, his brother, *Thomas*, having then two ſons, *Joſeph Tolſon Lockyer*, and *John*, in his will mentioned, ſoon after which *Thomas Lockyer* proved the will, and took poſſeſſion of the teſtator's real and perſonal eſtate.

In *June*, 1751, the ſaid *John Lockyer*, the younger ſon of *Thomas*, died, under twenty-one years of age, the ſaid *Joſeph Tolſon Lockyer* having then attained ſuch age—but *Thomas Lockyer* kept the poſſeſſion, alledging that he might marry again, (his wife having been long before dead, without other iſſue)

iſſue) and have another ſon, who, in caſe of his attaining the age of twenty-one years, would become entitled, under his brother's will, and that, in the mean time, the rents and produce were to be received and improved by him, as truſtee for ſuch ſon as would be ultimately entitled.

In *September*, 1759, *Joſeph Tolſon Lockyer* made his will, and thereby, in the ſtrongeſt terms, gave all he was entitled to, or intereſted in, or which ſhould in anywiſe belong to him, to his wife, *Maria Lockyer*; and, in *March*, 1765, died, leaving the ſaid *Maria* his widow; who, by virtue of ſuch will, claimed to ſtand in the place of her ſaid huſband, as to the intereſt derived under the will of *John Lockyer*, in his real and perſonal eſtate.—The ſaid *Maria Lockyer* afterwards intermarried with Mr. *George Perry*, who is ſince deceaſed, leaving her the ſaid *Maria*, now *Maria Perry*, his widow.

In *June*, 1785, the ſaid *Thomas Lockyer* made his will, commencing as follows—

This is the laſt will and teſtament of me, *Thomas Lockyer*, touching the ſettling and diſpoſing of ſuch worldly goods and eſtate wherewith it hath pleaſed God to bleſs me. And the teſtator gave all his eſtate to *Edward Phelips* and *John Old Goodford*, Eſq. upon truſt, as to the perſonal eſtate, to pay the intereſt and produce thereof to his daughter, *Mary*, the wife of *Samuel Smith*, Eſq. during her life, excluſive of her huſband, and, afterwards, in truſt for her children; and, as to the real eſtate, to pay the rents and profits to his ſaid daughter, during her life, and, on her deceaſe, he gave the ſame to his grandſon, *Thomas Smith*, ſon of his ſaid daughter *Mary*.

In the month of *July* following, the ſaid *Thomas Lockyer* died, not having had any other ſon; having held the poſſeſſion of his ſaid brother's fortune upwards of fifty years, improving the ſame, as a *good Chriſtian*, agreeable to the pious introduction to his will—as if the talent had been his own—giving way, indeed, to an idea, which took place after the death of his ſons, that all he poſſeſſed

poſſeſſed was his own, and enjoying within himſelf what a noble conteſt, or, in his more uſual phraſe, what a rare law-ſuit, he ſhould leave behind him.

Nothing could be of greater commendation to Mrs. *Perry*, and of which the reward awaits her, than her prudent conduct during the life-time of *Thomas Lockyer*, making no ſhew, nor taking any ſtep in a view to her expected fortune, (except that, being a native of *Holland*, ſhe thought fit to obtain an Act of naturalization, to obviate cavils on account of her place of birth) otherwiſe avoiding every occaſion of giving him umbrage, well knowing it to be in his power, and in his contemplation likewiſe, to put her ſucceſſion in danger; and, in fact, the old Chriſtian did, in his ſeventeenth luſtre, take to his arms a conſort of blooming eighteen, not entirely without feeling, for the gallant *Thomas* was no Anchorite, but materially to throw a cloud over the proſpect of thoſe whom he could not but repreſent to himſelf turning their eyes towards the golden ſhower, now ready to drop before them.

Yet there was a counter-impreſſion produced as it were, on the bridal-pillow, ſufficient for the protection of Mrs. *Perry*,—jealouſy, ſtill more powerful than envy, which did not fail to haunt the enamoured ſage, to the eighty-ſeventh year of his love.

Soon after the death of the ſaid *Thomas Lockyer*, the ſaid Mr. *Phelips*, alone, proved his will, excluſive of the ſaid Mr. *Goodford*, aſſociating, in his room, the ſaid *Samuel Smith*, in the execution thereof, not altogether in the line of the truſt, as being the huſband of the lady and father of the children for whom it was conſtituted; and, in conſequence, thoſe gentlemen took poſſeſſion of the eſtate and effects of which the ſaid *Thomas Lockyer* died poſſeſſed; and, having intermarried with the ſaid Mr. *Lockyer's* daughters, and thus become his ſonsin-law, came into poſſeſſion, either in his life-time, or at the time of his death, of *all* the real and perſonal eſtate, both of *Thomas Lockyer* and *John Lockyer*, of which the ſaid *Thomas* was poſſeſſed, excepting always the neceſſary ſupply, for the eſtabliſhment at *Maperton*, ſome occaſional compliments

compliments to the obliging dames, and certain charitable donations to the ſecond poor of *Ilcheſter*.

To them, therefore, the ſaid *Maria Perry* applied, on the death of the ſaid *Thomas Lockyer*; more immediately to the ſaid Mr. *Smith*, then reſident in *London*, for an account of the eſtate of the ſaid *John Lockyer*, to the poſſeſſion of which ſhe was now become entitled, and that the ſame might be delivered up to her.

In anſwer to this it was required, as a preliminary, that ſhe ſhould give up the capital manſion, and all and ſingular the domicils, together with all other the lands and hereditaments in *Ilcheſter*; that is to ſay, the moſt valued eſtate; that then ſhe ſhould have given up to her, the other eſtates of *John Lockyer*; ſuch, it is to be underſtood, whereof the title might appear; together with a certain ſum, which they thought fit to dictate, an inſignificant part of the rents of the eſtates; intimating, nevertheleſs, that ſuch propoſition was made

made on the ground of her title being diſputable.

Mrs. *Perry*, not apprehending how, upon the ſuppoſition of a claim in any other perſon, any part could properly be given up to her, and ſtill leſs how they, not profeſſing to claim any intereſt or truſt therein, ſhould appropriate any part to themſelves, could not but look upon this in the light of a manœuvre to defeat her of her right. She therefore ſoon perceived ſhe had no remedy left but by recourſe to law, not without a full ſenſe of the hard neceſſity of being driven to engage in law with gentlemen of ſenatorial rank, and with her own weapons in their hands, ready to be turned againſt her.

In this ſituation, notwithſtanding ſhe cauſed an Ejectment to be brought, as of Eaſter Term, 1787, for the recovery of the poſſeſſion of the lands and tenements, and alſo a Bill in Chancery to be filed, in which the ſaid Meſſrs. *Phelips* and *Smith* were the effective defendants, for a general account

account and diſcovery of the property of the ſaid *John Lockyer*, the teſtator, in which a principal object was the production of the title-deeds, and writings relating thereto.

The Ejectment, as brought by her, although Declarations were of neceſſity delivered to all the tenants, made but a ſingle cauſe. But the firſt ſtep, on the part of the defendants, was to ſplit and divide it into as many cauſes as there were tenants in poſſeſſion, the ſaid Mr. *Phelips* ſtanding as defendant with the reſpective tenants in every cauſe, ſo that the plaintiff, in order to the recovery of ſeven or eight tenements, within the ſame boundary, in *Ilcheſter*, had to try as many cauſes, and, in like manner, for more than double that number in *Yeovil* and *Ilcheſter*; all of them generally underſtood to have been comprized in one purchaſe, by the ſaid *John Lockyer*, and the conveyance thereof being in the poſſeſſion or power of the ſaid defendant.

The oſtenſible reaſon of this ſhould ſeem to be, that the plaintiff claiming in prejudice

dice of a truſt, ſhould be put, at her utmoſt peril, to the proof of every acre. Whether the purpoſes of juſtice, and of defence likewiſe, might not have been as well anſwered, without this multiplication of ſuits, needs no great ſkill to determine; but the real intent ſeems to have been rather too much laid open in putting the plaintiff to try her title to the houſe in one cauſe, and to the ſtable in another.

Five of theſe cauſes being brought on for trial, at the enſuing Aſſizes for the county of *Somerſet*, beſides the neceſſary reſearches to prove the general ground of title, a difficulty, after ſuch a length of time would ariſe, in aſcertaining the premiſes. And, it was objected to the plaintiff, not without ſeeming gravity, that ſhe ſhould have poſtponed her cauſes to a future Aſſizes, in order for a production of the deeds, in the courſe of the cauſe in Chancery; and, upon the whole, being, from the particular caution of the court, at the outſet of cauſes of ſuch novel complexion, put to rather ſtrict proof of the ſeveral parcels having been the

poſſeſſions

poſſeſſions of *John Lockyer*, ſhe would probably have been foiled as to a valuable eſtate, her undoubted right, but for certain papers, accidentally diſcovered, under the well-known ſignature of *Thomas Lockyer*.

The plaintiff having, however, entitled herſelf to verdicts in the ſeveral cauſes, upon a ſuppoſition of her general title, under the will of her former huſband, the next ſtep of the defendants was to apply for a ſpecial verdict, in order to a determination, in the ſtrict courſe of law, "Whether the intereſt "*Joſeph Tolſon Lockyer* had in the premiſes, "being contingent, in regard it might have "failed, or been defeated, in caſe of an-"other ſon of *Thomas Lockyer*, was deviſe-"able by law." And now the premiſes ſtanding as the eſtate of *John Lockyer*, and the truſt under *Thomas's* will conſequently out of the queſtion, the brothers had to change, and explain, if poſſible, the ground of their further proceeding; for it is here to be remarked, that in this ſtate of the concern, they had no more to do with it than the mereſt ſtrangers; for it is no queſtion whether

whether the lands of *John Lockyer* belong, in any reſpect, to the deviſees of *Thomas*, his eſtate and truſt being, confeſſedly, at an end on his death, but the queſtion, if any, would be, between the plaintiff and the heir at law of *Joſeph Lockyer*, Mr. *Edward Williams*, his couſin — If deviſeable by *Joſeph* they belong to the plaintiff; if not they deſcend to the heir:—but it would be extraordinary to ſuppoſe the argument now, for the firſt time, taken up for the ſake of the heir, who was preſent at the trial, as the witneſs, to prove the will, under which the plaintiff derived her title, himſelf making no claim; eſpecially ſince, if they had brought about a ſettlement for a trifle with the plaintiff, they would have been to oppoſe him with her title, if he had made a claim, and now they would be to ſupport a title in him againſt her, although he makes no claim at all—and it is yet to be known upon what warrant or ſufferance they take upon them (for it is now their own act, and conſequently at their own expence) to call upon Courts of Juſtice for the determination of a point in which they

they have no concern themſelves, nor authority from any perſon who has, and about which there is therefore no real diſpute.

In contending that *Joſeph Tolſon Lockyer* had not a deviſeable intereſt, the defendants had to reſort to certain ancient poſitions, which, however they might in former times have afforded ground for cavil, have, for the laſt fifty years, been laid aſide and exploded. The reſolution of the Court being therefore in favour of the plaintiff, not however without every latitude to the ingenuity and learning of counſel, for which there was ample ſupply from the derelict materials of law, the next ſtep was to bring a Writ of Error in the King's-Bench, whereby to ſuſpend the judgment, not upon any doubt of its being confirmed in that Court, which has accordingly ſince been done.

The plaintiff, finding that every method of delay was to be put in practiſe againſt her, prepared to bring on others of the cauſes to a trial. In the mean time, after ſeven months deliberation by one defendant, and

nine

nine by another, anſwers, or what were ſo called, to the Bill in Chancery, came in, whereby ſhe hoped to have ſeen ſome account of the title-deeds, but, inſtead of this, was not a little ſurprized to be told by one of the defendants, Mr. *Phelips*, that he had delivered them to Mr. *Smith*, and, by Mr. *Smith*, that he was at *Rome*, and had left them in *England*. However, a further anſwer being required from the defendant in *England*, it was expected the deeds might have been ſtill brought forth; but for this, proceſs for contempt of court was had in vain; and, what ſeemed moſt myſterious, it became as difficult to obtain an anſwer from the defendant at home, as from the defendant at *Rome*.

Notwithſtanding the trial being brought on, at the diſtance of a twelvemonth from the former, the buſineſs now began to clear up to every one's conviction. Some of the eſtates *Thomas Lockyer* had declared were his ſon's; others he could not make a title to, and others that they were not his own; particularly that he had no eſtate in *Yeovil*, where many of them lay, and what went to

the whole, in diſcourſe with a reſpectable farmer, with whom he ſome time lived in familiarity, he declared he had no eſtates, other than what came from his brother *John*, but what were of his own purchaſe, ſpecifying the firſt purchaſed by him, which appearing to be many years after the death of his brother; the concluſion was equally ſtrong with regard to the eſtates he was in poſſeſſion of before ſuch purchaſe, as if preciſely recollected to have been in the poſſeſſion of *John Lockyer*, eſpecially as in caſe of a miſrepreſentation, it might have been refuted with certainty, by a production of the title; accordingly verdicts were obtained by the plaintiff in all the cauſes, nor was it at all matter of ſurprize, though certainly the firſt inſtance of fifteen eſtates being recovered at one Aſſizes, without the production of a title-deed.

On this occaſion, among other circumſtances, to ſhew that *Thomas Lockyer* aſſumed only to hold his brother's eſtates, in virtue of the truſt; it came out that he kept his ſon in awe by menacing him with putting

it in the power of another wife to defeat his ſucceſſion.

It ſhould not be omitted, that an apology was ſuggeſted, at the opening of theſe cauſes, for the honourable defendant, that he was not the willing means of this extraordinary litigation. But, will the aſſiſtant brother, when nothing comes of it, ſo readily ſubſcribe to this; and may he not, under certain circumſtances, be rather apt to refer to the name on the record, and ſhould it not be conſidered what inference as to the intention will follow, on his name appearing in oppoſition to the plaintiff's further claims, having it within his knowledge, whether or not the eſtates were purchaſed by *Thomas Lockyer*, that, in the one caſe, it muſt be to take the chance of a ſlip in the formal proofs to deprive her of her right, and, in the other, to enſnare her.

The Writ of Error coming on in the Court of King's-Bench, in *Hilary* Term laſt, and the Judgment of the Court of Common-Pleas thereupon affirmed, without hearing counſel on the part of Mrs. *Perry*, the remaining ſtep was to bring a Writ

Writ of Error in the *Houſe of Lords*, and which has been accordingly done, although in one cauſe only, the reſt, in which verdicts were obtained, having depended on the Writ of Error in the *King's-Bench*, and Executions iſſued thereon. Conſequently with no other view than to harraſs the plaintiff, and keep her out of as much of her rights, and for ſo long time as poſſible, —and, in conſequence of which ſyſtem, ſhe is to be driven to bring before the Court her title to a ſtill greater number of eſtates, ſtanding on the ſame footing with thoſe already recovered.

But there being now a perfect deciſion, as to the right, and every diſguiſe, as to the intent of the meaſures taken in oppoſition to the plaintiff's rights being removed, ſhe wiſhes to be reſolved whether perſons coming caſually, not to ſay wrongfully, into the eſtate of another, to which they claim no right themſelves, laying out and purſuing a colourable ſcheme of law, with the avowed purpoſe of keeping the party having right out of poſſeſſion, and, in order to

enforce a relinquiſhment of part, are not liable to make good, by law, the damages ſuſtained by ſo unheard of a proceeding, as much as if the poſſeſſion had been obtained by like colour of law; in which caſe, examples are not wanting of a legal remedy, with the aggravation, beyond direct violence, of perverting the law to purpoſes of oppreſſion.

Of whatever conſequence it might be to the plaintiff, to recover the poſſeſſion, it would be of far greater to aſcertain the amount of the eſtates, and property in general, ſo as to lay a foundation for an account of the income and produce of the whole, which would be the great object of her ſuit.

During the courſe of the proceedings, overtures, it may be preſumed, would paſs, for the ſettlement of the whole, with this difference between the parties, that the defendants would ſignify a ſum at large, adverting, as little as poſſible, to the ſubject-matter; ſtill, alſo, hanging on the domains at *Ilcheſter*;

cheſter; ſhe would think it juſt, that the account ſhould be ſtated on a proper ground, ſo as to be apprized of the extent of her right, at the ſame time, willing to ſacrifice a part, in conſideration of being put in poſſeſſion of the reſt.

As it was the duty of *Thomas Lockyer* to have kept an account, with reſpect to the truſt-eſtate, particularly under the ſpecial directions of his brother's will, if no ſuch account is produced it muſt be taken moſt ſtrongly againſt him.

A judgment, as to this, may be formed from circumſtances, ariſing from the bill and anſwers in *Chancery*, and, upon which, a ſtatement has been drawn up for the conſideration of the defendants.

The plaintiff, in her bill, alledges, the eſtates to have been of the yearly value of 600l. and in which, ſhe conceives, ſhe is ſupported by ſubſequent enquiries.

The defendants ſay they apprehend, they are under 400l. a year.

For this, it is preſumed, they would go on the title-deeds, which their agents, at leaſt, would inſpect, not including the eſtates which *Thomas Lockyer* ſold and diſpoſed of; ſome of which it is known he did; nor ſuch which he took fines for, which it is admitted he did; nor ſuch, whereof the title-deeds might not appear.

The perſonal eſtate ſeems to have lain more in the dark.—" The defendants never " heard of any perſonal eſtate of *John Lock-* " *yer*, but apprehend, if there was any " ſuch perſonal eſtate, the ſame has been " long ſince converted and diſpoſed of."

It ſeems rather ſingular that no ſuch perſonal eſtate ſhould have been heard of, as the will of *John Lockyer* takes notice of 3000l. part thereof—however, it is not ſaid that it is not believed there was any ſuch perſonal eſtate, but the contrary inferred, by ſuppoſing it to be converted and diſpoſed of; but how converted? —Whether to the purpoſes of the truſt, or *Thomas Lockyer*'s own, it muſt be accounted for, and, therefore, in this

this inſtance, *Thomas* may as well be left to paſs for an honeſt man.

But, is there no trace of this perſonal eſtate in any of the writings of *Thomas Lockyer*, or of *John Lockyer*, yet in being? or, have they as yet, not to beſtow fruitleſs trouble, and through want of curioſity, been thrown by without inſpection? In the end, however, though now cloſely locked up, they muſt all, not ſome, be brought forth for examination; among the reſt, the book of fees of *John Lockyer*, for that, it is preſumed, would, above all, be preſerved; the Attorney's book, the foundation of the bills, the repoſitory of his treaſure, and would come forth whole from the back cupboard, with the deeds and muniments of his eſtates. Yet if, by any accident, ſuch of theſe papers as might be material, ſhould be prevented from making their appearance, the place will be, in ſome meaſure, ſupplied, by papers, providentially preſerved from the flames, to which they were deſtined, as if to bring to light not only certain of the real eſtates, but large portions of the perſonal eſ-

tate, which might, otherwiſe, have been ſunk in oblivion.

In ſtating the account, the computation may be of the amount in money, for the whole time, from the death of *John Lockyer*, or elſe by conſidering the eſtates purchaſed by *Thomas Lockyer*, after the death of *John Lockyer*, the ſon, and *Joſeph Tolſon Lockyer* having attained his age of twenty-one, as having been purchaſed with the money ariſing from the ſaid *John Lockyer*, the teſtator's eſtate, purſuant to his will, and to be in truſt for the plaintiff accordingly.

Taking the income of the eſtates at 4col. a year, together with the perſonal eſtate, ſuch part as can be proved, and ſtating the account, at four *per cent.* and making the proper reſts, according to the uſual mode of the Court of Chancery, the amount, it is conceived, would be not leſs than 80.000l. but it is left to be judged, by all who knew *Thomas Lockyer*, whether he did not make an advantage of it equal to five *per cent.* In fact, he carried the improvement to its full extent,

extent, ſo that if the property was capable of producing 100,000l. and he made of it all it was capable of, the concluſion is, that 100,000l. was made of it.

It was the genius, the ruling paſſion, of *Thomas Lockyer*, to make the utmoſt of whatever money came to his hands—ſo well known in the country, for heaping up and ac umulating, as to acquire the name of *Snowball*—juſtly repreſenting his character, and, it is preſumed, his fate; every particle, with which he came in contact, attaching to him, and finally melting away and returning to its proper channel.

But taking Mrs. *Perry*'s rights upon the ground of the truſt-money having been laid out in the purchaſe of lands, in the mode before ſtated, then, as all the purchaſes made by *Thomas Lockyer* were bargains, ſhe would have a further advantage, to the amount of a third or fourth part of the value of the eſtates. And this is certainly the ſpecific mode of carrying the will of *John Lockyer* into execution, the manifeſt intention

tention being to eſtabliſh, in an object of his own, a large landed eſtate in that country.—But, the inheritance happening to fail, why does not Mrs. *Perry*, in point of connection, as well as right, ſtand in as fair a light, for the ſucceſſion, as the claimants under the illuſtrious *Thomas Lockyer*? And who can ſay that *Thomas Lockyer* did not make the purchaſes in conformity to his brother's will, though he would then find himſelf at a loſs how to declare the truſt.

From the tenor and complexion of his will, and his own notion, it is to be inferred that he did not, in this laſt act of his life, conſider theſe eſtates as the ſubject of his diſpoſal.—In his will he ſpecifies no eſtates—nor would he; and, ſince he could not conſcientiouſly purchaſe lands for his own benefit, having truſt-money in his hands, ſpecially directed for that purpoſe, without applying the ſame in like manner; the lands, thus purchaſed, cannot be underſtood to be included in the worldly eſtate with which it had pleaſed God to bleſs him—and further, though at certain times,

times, in his leſs pious hours, he would willingly entertain an idea of converting theſe eſtates, yet he could not fix a baſis, ſo as to carry his gratification further than to leave them a ſubject of ſtrife and contention, in which it will be readily ſeen that he could not have left a ſtronger argument than his own ſcruples againſt himſelf.

In the general view, however, he fully ſucceeded, nor could he have choſen his alliances better, although the plaintiff truſts, that, with ſufficient arms, which ſhe is now nearly within reach of, ſhe ſhall not be driven by the confederates from the field. —Nor let it ſeem ſtrange, if, in the contention, *Yeovilton*, *Limmington*, *Bearly*, *Charlton*, *Cary*, *Chilthorn*, and all the accumulated ſtores, be ſwept away, " and, like the baſe-" leſs fabrick of a viſion, leave not a wreck " behind."

And whence ſhould the mighty *Thomas*'s boaſted riches ariſe?—He was born to no fortune.—The outſet was, that *John*, being bred an Attorney, and another brother, *Charles*,

Charles, having acquired a fortune in the *Eaſt-Indies*, contrived to make up 5000l. to be added to the like ſum, on the part of the lady, to be inveſted in lands, as a ſettlement on his marriage with Miſs *Tolſon*; whereupon, living with a family, in *London*, having an habitation alſo in the country; it was well if the eſtabliſhment could be maintained with the income of the ſettlement; and then 30, or 40,000l. may be reckoned no inconſiderable ſum, to be laid up in the buſineſs of a Broker.

There was, it is true, another mode of ſpeculation, by which he is ſuppoſed to have added to the maſs, the wholeſale traffick of the borough of *Ilcheſter*; but not to take the declaration of the ſaid *Thomas* to the letter, that he got nothing thereby; ſuppoſing the acquiſition of ſome few thouſands, after conteſts raiſed by the unrelenting *Shorland*, petitions, bounties, ſuits at law, and maintenance of friends in priſon, as it took riſe in the property of *John*, ought not that property to partake of the benefit?—And, ſhould any bonds or notes, as has been ſuggeſted,

geſted, from *Joſeph* to his father, appear, as they would ariſe in the borough-concerns, perhaps accompanying the qualification rent-charge, ought thoſe to be charged on the eſtate of *Joſeph*?—for as to any credit, or accomodation in any other view, it is enough to recollect his refuſal, in his ſon's laſt illneſs, to afford the leaſt aſſiſtance; the thrifty ſteward not chooſing to break in upon the truſt-eſtate, much leſs his own, towards the ſupport of an only ſon, againſt whom he had no other pretence of diſpleaſure, than for having married a lady whom he held himſelf in eſteem.—In fact, *Joſeph*'s proviſion aroſe wholly from his mother's family.

Upon the whole, computing the fortune of which *Thomas Lockyer* was ſuppoſed to be poſſeſſed, reckoning, as part thereof, 10,000l. a-piece, advanced on the marriage of his daughters. *Cheſter-meads* and *Maperton*, ſettled, as by agreement, on his own marriage, in what manner the defendants beſt know, with the addition of a few thouſands, the bulk of the property of which he died poſ-

ſeſſed

ſeſſed, would be applicable to the truſt of his brother's will, and the queſtion, inſtead of being, how much the plaintiff is to have, out of the eſtate of *Thomas Lockyer*, will be how much the defendants are to have out of hers. And it ſeems this idea is not new to them.

By the anſwer of Mr. *Phelips* it is ſtated, that the defendant *Smith*, did, by his permiſſion, take poſſeſſion of *all*, or *part* of the real and perſonal eſtate, which was of *Thomas Lockyer*, at the time of his deceaſe. Upon what ground or principle could this property be put in the poſſeſſion of Mr. *Smith*, conſiſtent with its being the ſubject of a truſt under the father-in-law's will?—How, with reſpect to the wife and her children eſpecially?—But, conſidering the property as the plaintiff's, as upon a ſettlement with her, ſhe would be to aſſign her right, they would become purchaſers to the full amount thereof. The words *all or part*, cannot eſcape obſervation—In whatever proportions *all* is ſhared, and, where it is charged in the bill that great part of the

money in the funds, and other the perſonal eſtate has been ſold, varied, or diſpoſed of, nothing of this is denied. But how is this participation to be ſecured and made good? Not upon the ſuppoſition of a truſt. The children, the wife, may be one day capable; and would not the Court, the proper guardian of friendleſs infants, upon ſo open a violation of truſt thus forced upon its notice, intimate the proper ſteps for the protection of the property, ſo as to preſerve it from the conſequences of ſpeculations, equally dangerous, whether in trade or politicks? But, upon the ground, and to the extent of the plaintiff's right, a ſolid title is only to be obtained—nothing like the ſetting up an ideal right, in one who claims none, in oppoſition to her to whom it is adjudged by law, and who, in fact, has the only undoubted right to all or part of the real and perſonal eſtate which *Thomas Lockyer* left behind him.

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